

22nd April 1948]

MR. PRESIDENT :—“ Why should not the Government put it in the form of a Bill? ”

SRI M. NARAYANA MENON :—“ That is another method. But there is no harm in the present method. Therefore when the Act of 1944 is repealed, the Act of 1939 as amended by the Act of 1940 is revived. As regards the other objection raised by Sri B. Blima Rao and another hon. Member that under section 107 we ought not to have passed Acts like this, I may say this. At the time when the Act of 1939 was passed or when the Act of 1940 was passed, they obtained the necessary authority from the Governor-General and now, why should you require another permission from the Governor-General? It is absolutely not necessary. We are only reviving an Act which is dead because of another Act and we have got the authority to repeal an Act and therefore, there is no harm, if we do not get the permission of the Governor-General again in this matter. It cannot be said that if we do not get the permission, we are acting against the Central Government. There is no risk at all on the part of the Government in doing this. On the other hand, if the public find that they will be affected by the Act of 1939 now revived or re-enacted it is their duty to agitate and therefore there is absolutely no harm or risk in passing this Bill.”

MR. PRESIDENT :—“ The question is—

‘ that a Bill to re-enact the Madras Tobacco (Taxation of Sales and Licensing) (Amendment) Act, 1940, and to repeal and re-enact with certain modifications, the Madras Tobacco Taxation of Sales and Licensing (Repeal) and General Sales Tax (Amendment) Act, 1944, be passed into law.’ ”

The motion was put and carried and the Bill was passed into law.

(4) THE MADRAS RESTRICTION OF HABITUAL OFFENDERS
BILL, 1948 (L.A. BILL No. 13 OF 1948).

THE HON. SRI K. MADHAVA MENON :—“ Mr. President, Sir, I move—

‘ that the Madras Restriction of Habitual Offenders Bill, 1948 (L.A. Bill No. 13 of 1948)^a as passed by the Legislative Assembly be taken into consideration.’

I am sure that this Bill will not have the objections raised by Dr. John and Sri Narayanaswami Nayudu, that it is brought in as an Annexure or a Schedule. In this connexion, I would like to say only a few things.

“ The Criminal Tribes Act, 1924, was intended to control members of criminal tribes both individually and collectively. This Act was amended in 1943 and again in 1945. The object of the amendments was to stiffen the original Act in certain respects.

[Sri K. Madhava Menon] [22nd April 1948]

The Criminal Tribes (Madras Repeal) Act, 1947 intended to repeal the Criminal Tribes Act in its application to this Province, was passed in May 1947. But the Act has not yet been brought into force pending promulgation of the new Madras Restriction of Habitual Offenders Act.

The Madras Restriction of Habitual Offenders Act, 1943, provides for the application of the provisions of the Criminal Tribes Act, 1924 to individual habitual offenders. It is proposed to revise it with the object of having a single Act to control the activities of individual habitual offenders, whether they are members of a notified tribe, or not, and to enforce the new Act and the Criminal Tribes (Madras Repeal) Act, 1947 simultaneously.

The Criminal Tribes Act generally provides for the declaration of tribes, gangs or classes of persons of well-known criminal propensities as notified tribes. Members of notified tribes are required to register their names with the police. Some of them are required to notify their residences and some to report themselves at fixed intervals to the police. The movements of sections of tribes are restricted to particular areas. Dangerous elements among these tribes are confined to settlements.

Towards the end of 1946 the Government directed that the provisions of the Criminal Tribes Act, 1924, and the Madras Restriction of Habitual Offenders Act, 1943, should not be applied afresh to any person. They subsequently directed in March 1947 that the application of the provisions of the Criminal Tribes Act should be confined to those in Criminal Tribes Settlements only. The result is that the provisions of the Act are not now enforced against the members of notified tribes outside the settlements.

The present Bill is essentially a reproduction of the Madras Restriction of Habitual Offenders Act, 1943, eliminating all provisions which may be considered as objectionable and includes in it the restrictive provisions of the repealed Act only with the object of making it applicable to individual offenders. The general outline of the proposed legislation is that no tribe, gang, or class of persons will be brought *as such* within the scope of the new Act. Only individuals, whether members of notified tribes or not, will be brought within its fold. It is proposed to provide for the following :—

- (i) notification of individuals as habitual offenders;
- (ii) offenders to notify residence;
- (iii) restricting movements to specified areas; and
- (iv) confining offenders in settlements.

The Bill before the House gives up the provision existing in the Criminal Tribes Act of reporting to the Police.

Immediately on repeal of the Criminal Tribes Act, a large number of habitual offenders who are at present subject to restrictions (though such restrictions are held in abeyance) will cease to be

22nd April 1948] [Sri K. Madhava Menon]

liable to any restriction. To deal with the interim situation, it is proposed to bring within the restrictions of the new Act, every one who was registered under the former Act at the commencement of the new Act, and who within the previous five years had been ordered to give security under section 110, Criminal Procedure Code or convicted of an offence under section 24 of the Criminal Tribes Act or of a non-bailable offence under any other law.

“The provisions in the Bill are liberal when compared with the provisions of the existing Madras Restriction of Habitual Offenders Act. I shall briefly indicate the changes.

“The definition of the term ‘Habitual Offender’ in the existing Habitual Offenders Act brings within its scope those who had committed at least three non-bailable offences or who had been ordered to give security under section 110, Criminal Procedure Code, or who by repute as established at a magisterial inquiry are addicted to the commission of serious offences against person or property. The definition of an habitual offender in clause 2 of the Bill is in much more restricted terms. The reference to non-bailable offence has been confined to serious offences set out in the schedule. It is only in respect of the following offences that this Bill will apply. You will find there are three classes of offences—

(1) Offences under Chapter XII of the Indian Penal Code, such as counterfeiting coin, making or selling instrument for counterfeiting coin, and other offences connected with counterfeiting coins.

(2) Offences under Chapter XVI of the Indian Penal Code, such as culpable homicide, murder, causing grievous hurt, kidnapping, etc.

(3) Offences under Chapter XVII of the Indian Penal Code, such as theft, extortion, robbery, dacoity, rioting, trespass and offences connected with theft, extortion, dacoity, etc.

“Secondly, instead of merely establishing that a person has committed an offence, it has been made clear that a specific sentence of imprisonment should have been passed in respect of the offence.

“Thirdly, there should be a subsequent conviction in respect of an offence committed after the previous conviction or convictions, so that only a person who has been convicted on three different occasions after each conviction can be thought of being brought under the provisions of the present Bill.

“The existing provision for a magisterial enquiry has been deleted *in toto*. The demand for security for good behaviour under section 110, Criminal Procedure Code, will not make a person a habitual offender, as in the original Act, but will be regarded as equivalent to the passing of a single sentence of imprisonment. Under the former Act, the demand for security for good behaviour under section 110, Criminal Procedure Code, was thought sufficient to bring a person within the mischief of the Madras Restriction of

[Sri K. Madhava Menon] [22nd April 1948]

Habitual Offenders Act. While the existing Act does not provide for Government action under the Act being questioned in a Court of law, the Bill provides for Government action under clause 3 being questioned in a court of law.

“ Sir, let me now explain the necessity for passing this new Bill into law before the end of April 1948. The Criminal Tribes Amendment Acts of 1943 and 1945 and the Madras Restriction of Habitual Offenders Act, 1943 were passed during the Advisers' regime and these Acts will lapse on the 30th April 1948. The Government are advised that some administrative difficulties may arise if the new legislation is not passed into law by the end of this month. Clause 16 of the Bill provides that every notification issued in respect of any person under section 3 of the Restriction of Habitual Offenders Act, 1943 and in force at the commencement of this Act, shall be deemed to have been issued under section 3 (1) of this Act. As the Habitual Offenders Act of 1943 lapses this month, it is doubtful whether a man registered under this Act can be deemed after 30th April 1948 to be registered habitual offender. If the new Act is not passed into law before the end of April 1948, the validity of continuing any action taken under the Acts passed in 1943 and 1945 will be left in doubt. It is very essential, therefore, to pass the present Bill into an Act before the end of this month. When the new Act comes into force, the Criminal Tribes (Madras Repeal) Act, 1947, will also be brought into force, so that the Criminal Tribes Act, 1924 as amended in 1943 and 1945 and the Madras Restriction of Habitual Offenders Act, 1943 will be repealed altogether.

“ Sir, the legal position is also rather complicated. The Criminal Tribes Act, 1924 (Central Act VI of 1924) was amended by two Madras Acts passed during the section 93 situation, viz., Madras Act XXIX of 1943 and Madras Act XXV of 1945. The former Act is pretty comprehensive and covers a wide ground. Another Act, called the Madras Restriction of Habitual Offenders Act, was also passed during the section 93 situation, as Madras Act XXX of 1943. After the proclamation under section 93 was revoked and the Provincial Ministry was restored, Madras Act X of 1947 was passed. That Act repeals with effect from such date as the Provincial Government may by notification appoint, the Criminal Tribes Act, as amended by Madras Acts XXIX of 1943 and XXV of 1945, except for the purpose of section 3 of the Madras Restriction of Habitual Offenders Act, 1943. No date has been appointed so far under Madras Act X of 1947.

“ The position on the 30th April 1948 on which date two years will have elapsed from the revocation of the proclamation under section 93, will therefore be as follows :—

(1) Madras Acts XXIX of 1943 and XXV of 1945 will lapse.

(2) The Criminal Tribes Act, 1924, as it stood before Madras Act XXIX of 1943, will be restored to its full operation.

22nd April 1948] [Sri K. Madhava Menon]

(3) The Madras Restriction of Habitual Offenders Act, 1943 (Madras Act XXX of 1943) will lapse and cease to be in force.

“ The validity of continuing any action taken under any amendment made by Madras Act XXIX of 1943 will therefore be left in doubt. Similarly the Madras Restriction of Habitual Offenders Act, 1943, having lapsed, it may be difficult to hold that any action taken under that Act can be continued after the 30th April 1948. Having regard to these difficulties, it is very desirable to have this Bill placed on the Statute Book before the 30th April 1948. After all, this Bill is essentially similar to the Re-enacting Bills, Nos. 1 and II, inasmuch as it seeks to deal with a situation created by the impending lapse of three Acts passed during the section 93 situation.

“ I shall just indicate how the Bill now placed before you differs from the Madras Restriction of Habitual Offenders Act, 1943. In clause 1 of this Bill, the Government fix a date for the coming into force of this Act and clause 2 deals with certain definitions. The definition of the term ‘ Habitual offender ’ has been modified. The proposed definition is in much more restricted terms. In the old Act, a Habitual Offender meant, a person who has committed at least three non-bailable offences. It also included offences committed at one and the same occurrence. He could be made an habitual offender on one of the offences and security for good behaviour demanded under section 201. And he was not given any right to appeal to a court also. In this new Bill, the definition of a habitual offender has been made like this. ‘ Habitual Offender ’ means a person who, before or after the commencement of this Act, has been sentenced to a substantive term of imprisonment, such sentence not having been set aside in appeal or revision, on not less than three occasions, for one or another of the offences under the Indian Penal Code set forth in the schedule, etc., etc.” I have read the schedule. Sir. The schedule gives the offences of counterfeiting coins, etc., and offences against persons such as murder and other things, theft and dacoity, etc. The three classes of offences have been mentioned in the schedule. Every person who has been convicted definitely three times and sentenced by a court three times, the sentences not being reversed in appeal, can be classified as a habitual offender. Unlike the old section, he must have been sentenced in respect of an offence after the passing of a previous sentence on a previous occasion. Further the provision with regard to the passing of an order requiring a person to give security for good behaviour with reference to section 110, Criminal Procedure Code, which would make a person liable to be classified as a habitual offender outright formerly, has been modified and rectified.

“ Another change is about the jurisdiction of courts mentioned in clause 15. Formerly section 5, stated that no court should question the validity of the Act, etc. It is too wide a provision and the Government have said that an order under clause 3 shall be questionable in a court and the aggrieved party can take up before

[Sri K. Madhava Menon] [22nd April 1948]

any court any order or notification passed by Government in the matter. That is the amendment that we have made in the present Bill. You will find that in regard to settlements the main provision says that the Government may authorize any officer at any time and they can direct any notified offenders who may be in a settlement to be discharged, or transferred to any other settlement.

"Sir, these main provisions of the Bill are now before hon. Members and as I have already told you, the section which restricts the movement of an habitual offender is certainly necessary in order to prevent crimes and it is a preventive clause. Sir, these are days when there is a wave of crime going on throughout the country and therefore, Government must have the necessary powers to prevent persons who are likely to commit such offences under some imagination or other. Moreover, such persons can be notified only after asking them to show cause why they should not be notified. In the Assembly, it was stated that section 16 of the Act is a little bit drastic because it says that those who have been registered under the provisions of the Criminal Tribes Act shall be deemed to be notified under section 3 under certain conditions. I must make it clear that it is on three definite conditions they can be deemed to be notified. They must have been convicted within five years of the passing of the Act. They must have been convicted for non-bailable offences under section 24 of the Criminal Tribes Act and security must have been demanded from them under Section 110 of the Criminal Procedure Code.

3-30
p.m.

"Sir, it is only these three particular classes of habitual offenders who are affected. After the passing of this Act and before the rules are framed, it is necessary that persons who are definitely known to be habitual offenders should be prevented from committing crimes. Power is taken for a temporary period within which the rules under the Act will be framed.

"Even otherwise, Sir, the members residing more or less in the area which was called the Criminal Tribes Area—the hon. Member Mr. Rajaram Navudu and others—represented to me that it may lead to abuse. The notification is to be made only by the District Magistrate or the Government. It is only those people who have committed offences mentioned in the Schedule to the Act who will be notified as habitual offenders. There is a proposal for giving the necessary instructions in order to see that as little restriction as possible is placed on these people. Powers are taken only to see that crime is prevented."

DR. V. K. JOHN :—"On a point of information, Sir, may I know how many habitual offenders there are and how many reformatories and settlements there are in the Province?"

THE HON. SRI K. MADHAVA MENON :—"Sir, I cannot say off-hand how many habitual offenders there are. Under the Criminal Tribes Act which is repealed, there are about three to four thousand persons registered. They are living under certain restrictions. There are four settlements: the Aziznagar settlement, the

22nd April 1948] [Sri K. Madhava Menon]

Stuartnagar settlement, the Bitragunta settlement and the Sitanagaram settlement. The number of members there is not very much."

* SRI B. BHIMA RAO :—" Sir, the Hon. Minister referred to one thing which pains some of the Members here. That is with reference to section 16 of the Act. Only the other day we had the pleasure of repealing the Criminal Tribes Act. Then I appealed to the Hon. Minister for Law to see that those who were classed under Criminal Tribes were reformed or re-employed so that they might not take to criminal activities again and be notified according to the provisions of the Act. But unfortunately nothing has been done in that direction and the provisions of the Criminal Tribes Act have been re-incorporated in this Bill. Every member of the Criminal Tribes who had the misfortune of having convicted within five years prior to the commencement of the Act will be a habitual offender. There is only a change of name: from being a member of a criminal tribe he becomes a habitual offender *ipso facto*. At least in the case of the ordinary habitual offender there is the chance of his appearing before the District Magistrate and explaining to him why he should not be notified as a habitual offender. In this case there is no safeguard at all. It is sad to think that at this time of day, the members of the Criminal Tribes should only have the nominal pleasure of the repeal of the Criminal Tribes Act and be included in the list of habitual offenders."

MR. PRESIDENT :—" I think the Hon. Minister referred to three offences. Please read section 16 again."

SRI B. BHIMA RAO :—" I do not want to take more time of the House. Suppose a boy of 12 to 15 years, a juvenile has committed a crime within the last five years, he will certainly come under section 16. *Ipsa facto* he becomes a habitual offender. The hardships these people have to undergo are very great. With regard to those who have been notified, they can question the order in a court of law, but with regard to these unfortunate members of the Criminal Tribes, they cannot question the order in a court of law. After all, Sir, the Assembly also is meeting in a short time again. These provisions may be amended in such a way as not to cause hardship to the unfortunate members of the Criminal Tribes and the matter brought again before the Assembly."

DR. V. K. JOHN :—" Mr. President, I must congratulate the Government on introducing this Bill not as part of the schedule to another Bill. I think the Hon. Minister now will realize how it is now possible to get assistance from the Members as he has got now."

" Sir, I regret very much that there has been need to introduce this Bill after two years of popular Government. I must also regret the Hon. Minister could not give us figures of habitual offenders or persons placed in that category for the last two years. We want to know whether the Government have tackled the

[Dr. V. K. John]

[22nd April 1948]

problem of habitual offenders well and whether there has been an increase or decrease in their number during the last two years. We have no figures of the number of habitual offenders in the reformatory schools and what these schools have done for them. The Government have simply introduced this Bill and the Hon. Minister has not thought it worthwhile to give the necessary figures for the information of the House and the public. Now that the Government have been in power for the past two years, I think there should not have been any habitual offender at all in this Province. On the other hand the Government finds there is need for this legislation.

“ Sir, some of the provisions of the Bill are very harsh. For instance, clause 5 provides that :

‘ Ever notified offender shall intimate such an authority and in such manner as may be prescribed, his place of residence, every change or intended change thereof, and every absence or intended absence therefrom.’

If a habitual offender intended in his own mind to absent himself from a particular place or to change his place of residence to another, his mere intention has to be reported. It is very harsh on the habitual offender who, I consider is an uneducated person and does not know the details of the law which relates to him. Why should you make his not reporting his intention an offence? After all he may cancel his intention as many of us intend to tour certain places and later on give up our intention. The introduction of the word ‘ intended ’ will work a hardship on these illiterate persons.

“ Sir, another provision to which I take objection is clause 15 which says :

‘ No court shall question the validity of any notification (other than one under section 3), or order, issued under this Act.

Sir, we have listened to speeches made by hon. Members introducing Bills after Bills containing provisions taking away the jurisdiction of the courts. It would appear that our National Government, our popular Government, gets a headache whenever they think of courts of law. The reason is they know they might be doing something wrong and they do not want the court to say that something wrong is done. They ask us, Members of the Legislature, to be party to Acts which take away the jurisdiction of the courts which we expect to decide things justly, and in accordance with law. (The Hon. Dr. T. S. S. Rajan : Question). It is even questioned whether the Courts of Law will decide justly, equitably and the executive wants to appropriate all the power.”

MR. PRESIDENT :—“ Rather it looks that the Government is so sure of the justice of what they do that they do not want interference.”

DR. V. K. JOHN :—“ They seem to be afraid that if somebody else looks into it, they will find it wrong. Otherwise if a person is quite sure of his stand, his first reaction would be, ‘ Let my order be discussed and considered in a court of law and a ruling given

22nd April 1948]

[Dr. V. K. John]

on it.' If a person is quite sure of the justice and the legality of what he does, he will not be afraid of courts or law. The hon. the Leader of the House thinks that the courts of law will never do justice. (The Hon. Dr. T. S. S. Rajan: Question again.) Then abolish them altogether. Pass an Act abolishing the courts altogether, and asking the executive to decide between litigant and litigant. They will always be correct and according to my learned friend, the Government can do no wrong. When we are being asked to be parties to a legislation ousting the jurisdiction of the courts, we think we are being asked to do something very unjust. The Government of this country should work in three departments—the executive, the legislature and the judiciary. Now the executive has been making attempts for a long time to take away the jurisdiction of the court altogether or to restrict its jurisdiction. I say, it is very wrong on the part of the executive to introduce Bills and ask us to be parties to them. Of course, they have a majority and that majority will stand in their stead. I find that both in the lower House as well as in this House, measures have been pushed through with speed. Nevertheless, I appeal to my friends on this side that they should not be a party to a legislation which takes away the jurisdiction of courts. It is said that no court shall question the validity of an order issued under this Act. I ask why should they not do it. (The Hon. Sri K. Madhava Menon: Is that so, is there no exception there?) Of course, there is an exception in regard to clause 3. But orders can be passed not only under section 3 but under many other sections also. So, I say the jurisdiction of the courts should not be excluded and we, members of the Legislature, should be jealous of the jurisdiction of the courts, and I think, Members of the Treasury Bench do no credit either to themselves or to the public which they represent or to the House, in introducing this Bill and trying to exclude the jurisdiction of the courts."

3-45
p.m.

SRI N. RANGA REDDI:—" Mr. President, Sir . . . "

MR. PRESIDENT:—" I hope you will not take long."

SRI N. RANGA REDDI:—" About 15 minutes, Sir."

MR. PRESIDENT:—" Is it necessary? "

SRI N. RANGA REDDI:—" Absolutely necessary, Sir. We have had legislation of this sort providing for abnormal situations that may arise in this Presidency. But unfortunately this is a piece of legislation which is intended to cover normal times and therefore it behoves us to scan every provision in this Bill. I was expecting, Sir, that this Madras Restriction of Habitual Offenders Act, may not find a place on the Statute Book at all. On the last occasion when this Bill was being discussed I congratulated the Government that the Criminal Tribes Act was not made applicable to this Presidency. Little did I realize then, nor did I anticipate that that Act will be introduced in the form in which this Bill is being introduced to-day. I must submit that under section 16 of this

[Sri N. Ranga Reddi]

[22nd April 1948]

Bill, every person who stood registered under the Criminal Tribes Act, 1924, at the commencement of this Act and who, within a period of five years immediately preceding such commencement, had been either ordered to give security for good behaviour with reference to section 11 will be deemed to be a habitual offender. The fact that he has been a member of the Criminal Tribes Act will be taken into consideration and he will be treated as a habitual offender. I may submit that there are at least some strong reasons for restricting the liberty of an individual when he is proved to have committed certain offences and he is considered to be a danger to the society. But in the case of a person who has been registered as a member under the Criminal Tribes Act, no such test has been prescribed. On the other hand, because he belongs to a particular gang or a particular tribe, he has to be registered as a member of the criminal tribes. I may submit that it is not within the province of anyone to choose one's parents. It is rather unfortunate that simply because he is born to a particular criminal, he has to be registered as a member of the criminal tribes. I think in such a case, it is not worth living in society. Another thing, Sir, is, that he is not registered as a member of the criminal tribes for anything done by him or for any infraction of the law that he is held responsible. On the other hand as usual, the sins of parents are visited upon the children. Simply because he is the son of so and so he is registered as a member of criminal tribes. Therefore, my respectful submission to the Government is, that the other provision of the law enacted in this Bill, that he was a member of the criminal tribe previously need not at all be taken into consideration. It is opposed to all canons of justice. There is no justification for it at all and he is not responsible for any acts done by his parents. I can understand, Sir, a man's liberty being curtailed for an act done by him. In this case, a man's liberty is sought to be curtailed for something done by his father or great grandfather.

"Next thing, I beg to submit, Sir, is that we have been quite familiar with the maxim that a man is punished only once for doing something and not twice. That is, if a man is punished once for anything, he should not be punished again for the same act except for a different offence. Here the case is where a man has committed an offence and is convicted and has even served a term of imprisonment he is still further punished. I invite the attention of the House to the definition of 'habitual offender'."

MR. PRESIDENT :—"Is there any provision under which simply because a man is a member of the criminal tribes, he is to be notified as a habitual offender?"

THE HON. SRI K. MADHAVA MENON :—"It is only under three conditions and after all this provision is only for a temporary period. Under section 16 . . ."

SRI N. RANGA REDDI :—"If a member of a criminal tribe has committed a non-bailable offence . . ."

22nd April 1948]

MR. PRESIDENT :—“ I thought you were saying that on the mere fact that he belongs to a criminal tribe, he will be notified.”

SRI N. RANGA REDDI :—“ I am only submitting, Sir, the mere fact that he is a member of the criminal tribe should not be taken into consideration at all.”

MR. PRESIDENT :—“ Perhaps as a safeguard to others this provision has been made.”

SRI N. RANGA REDDI :—“ It is not a safeguard. On the other hand, you can rope in all such people.”

MR. PRESIDENT :—“ Supposing the man is not a member of the criminal tribe and has not committed three offences, he need not be brought under this.”

SRI N. RANGA REDDI :—“ It is enough if he is a member of the criminal tribes he is convicted once, whereas in the case of other people they should have committed three definite offences. I shall deal with the definition of ‘habitual offender’. There also the intention of the Government seems to be to prevent these roving gangs from committing thefts and settling in particular places. But, the definition of ‘habitual offender’ is such that it will rope in other people who are peacefully living in villages. For instances, there are factions in villages and certain people are convicted for non-bailable offences. Very often they are convicted for technical offences and non-bailable offences also. The police, instead of discharging their duties properly, can easily bring in certain people under this section and restrain them and so on. So, Sir, this provision will be abused by the police. I know as a matter of fact, even under the present Restriction of Habitual Offenders Act, the police not being able to tackle factions in villages, want to bring in leaders of factions under this provision and curtail their liberty. One thing, Sir, if factions exist in villages it is only due to the incapacity of the police, because they are not able to maintain law and order properly in the villages. Therefore, it is the duty of the Government to see that order is maintained in villages. I find at present there is no sufficient security in villages. So, let them take upon themselves the responsibility and see that law and order are maintained by the establishment of police stations, so that security is assured to the villagers. My submission, therefore, is, if the Government were to plead that they have not got sufficient forces at their disposal, let them at least establish more police stations and infuse more confidence in the villagers. On the other hand, what the Government are at present doing is, they put up punitive police and collect some money for it and start some police stations in those villages. My submission to the House is, if these provisions are to be enacted as a permanent enactment, they should be confined to particular people who are classified just like criminal tribes and not agriculturists who are eking out their livelihood by peaceful means. As I said, if factions exist in villages it is not because of their irresponsibility but because the Government fail

[Sri N. Ranga Reddi]

[22nd April 1948]

to maintain their prime duty of establishing and maintaining security in villages. Instead of trying to take action after the offence is committed, let them devote greater attention even before the offence is committed. Let them give education, let them start more schools, let the people be provided with employment and let the economic condition of the villagers be improved. If all this is done there need not be any necessity for an Act like this and it will become only a dead letter. Therefore, what I beg to submit is simultaneously with the passing of this Act, the Government should tackle the question of security in villages by providing employment, by providing schools and by starting more police stations. Therefore, Sir, though I am not able to subscribe to every provision in the Bill, I am, of course, willing to give my general support to it, because we are passing through troublous times, and I do not know what problems we have to face in the future. I, therefore, support the Bill sponsored by the Government."

* SRI M. NARAYANA MENON :—" Sir, it is always pleasing to be merciful or to speak in terms of mercy and give mercy. But, when certain questions arise it is difficult to be lenient or merciful. When we take up section 16, the remarks made by my hon. Friend, Dr. V. K. John certainly appeal to me. If every member of a criminal tribe is to be notified it is hard because it is not his mistake that he is born of bad parents. There is a register of entry in respect of every such person under the Criminal Tribes Act. That is only a matter of census. That is, if a boy is born in a criminal tribe and grows to a certain age, he is registered as a member of the criminal tribe, though he is not convicted of any offence under section 16, unless he shows the inherited tendency to commit an offence so that his heredity has asserted itself and he is notified. Of course, there is no harm in that. If a man lives peacefully as a member of a criminal tribe he is not affected by section 16. My hon. Friend, of course, refers to the fact that an attempt should be made by the Government to educate them. Have they not done it under this Act, let us see. Sections 8 to 10 clearly show that Government want to establish industrial, agricultural or reformatory settlements and that they are also prepared to order any notified offender to be placed in such settlements, that is to say, for education. Section 10 is very clear on the point. Even if he is not a notified offender of the criminal tribe he may voluntarily reside there for agricultural, industrial or reformatory purposes; all these are seen in sections 8 to 10. The only thing that Government should do is to establish industrial and agricultural settlements. It is said that 'Government may establish industrial, etc., settlements'. Here the word 'may' may probably be not quite sufficient. It should be 'must' because it is necessary that Government should do these things and it is for the people to ask them to do such and such a thing.

"I would like to make a reply to the complaint made by the other side. It is said that Government are afraid of courts, or

22nd April 1948] [Sri M. Narayana Menon]

rather they do not want the help of courts, though this legislation is not guilty of that error, because if you read sections 15 and 4 together, the position will be clear. Section 15 says, 'No court shall question the validity of any notification (other than one under section 3), or order, issued under this Act. But, section 3 says that 'before any notification is issued in respect of any person under sub-section (1), clause (b) a reasonable opportunity shall be given to him to show cause against such issue or modification'. Now when he is notified, he is given an opportunity to show why he should not be notified. So, it is a reasonable opportunity given to him. The hearing is not done by the court, but only by an officer of the Government. Here section 4 comes to the rescue. It says 'the Government may, by notification, delegate their powers under section 3 to a District Magistrate, in respect of persons ordinarily residing in his district, subject to such restrictions and conditions as may be specified in the notification and subject also to control and revision by them'. So that, Sir, all these matters will be considered by Government, though they may not by themselves do that. The Government or the Minister concerned may not do that, but certainly they will delegate their powers to the District Magistrates who will certainly consider all the points raised. After all where is the objection that it should be considered only by a Civil Court? Court means a Civil Court. Why should it be considered by a civil court at all because it is a matter relating to criminal matters and all these matters may not be dragged to a civil court. It cannot also be said that it is necessary that a notification issued by Government shall be questioned in a civil court. And moreover the people may not go to a civil court. They would rather go to a Minister or Government because that is always more practicable. At the same time, a notified man must be given an opportunity and that is given under section 4 and the District Magistrate will consider all these aspects. These objections are not after all serious and we need not harp on them."

THE HON. SRI K. MADHAVA MENON :—" Sir, Dr. John was complimenting me for the assistance given to me by friends but I am often inclined to express 'save me from my friends'. Mr. Bhima Rao really did not give me assistance. He raised a ghost if I may call it. Mr. Bhima Rao has sympathy for the criminal tribes people and the habitual offender and it is no doubt a human feeling. He should congratulate himself for his much wanted sympathy, but the case he wanted to make out was really not a good case at all. As I submitted at the beginning, the whole position taken up by Mr. Bhima Rao was under section 16 of the Act. I have been for a considerable length of time a prisoner in many jails and I know the conditions of these people whom we generally call 'black caps', particularly the habituals in the Salem and Vizagapatam jails, where it is common knowledge that most of these black caps, tell us beforehand 'I am to be released to-morrow but keep my bed ready because in another 10 days I am coming back again'. So, Sir, the District Officials know that there

[Sri K. Madhava Menon] [22nd April 1948]

are particular persons who have consistently committed three offences consecutively and are likely to commit another offence. Is it not better to save them beforehand than watch and wait till they commit an offence and then punish them? Do you want the danger to be done or avoid it if you possibly can? The effect of clause 16 in the Criminal Tribes Act is automatically repealed. It is wrong to think that every person, as Mr. Ranga Reddi said, born hereafter will continue to be a member of the criminal tribes because he is the son of a father. There is no more registration of the criminal tribes. There are certain people who come under the Madras Restriction of Habitual Offender Act of 1943, but this Act expires on the 30th April and there are also certain orders passed under the Criminal Tribes Act which should be approved by the Governor. Now this is only for a temporary period and all those people who have been registered do not come in under these provisions and there are many people who are registered—there may be a hundred or two hundred of them—who are not likely to commit offences and who are now restricted either to report to the police or reside in particular places. But we should be able to prevent them and there is no law now existing under which we can prevent them. What the Government have done is that they have brought this as a temporary measure and as soon as the Act is passed, under section 13 among those who have been registered under the Criminal Tribes Act, those who have been committed already and those who are really dangerous can be notified or deemed to be notified for the purposes of this Act so that the restrictions may continue. That is the only object of the Bill. It is not because I have not got sympathy for the habitual offender that I support the Bill. Really I have much more sympathy towards them than people who profess to have, because, I know more about the conditions under which they live. So, the remarks made by hon. Members are only an attempt to make out that something wrong has been committed. Though it may be unparliamentary, I would say, they are only shedding crocodile tears with some other purpose and not with any sympathy towards habitual offenders."

MR. PRESIDENT :—" Perhaps, if that clause is removed and if there is no registration the Hon. Minister also may come in under that section."

THE HON. SRI K. MADHAVA MENON :—" No, Sir. I have put in three or four conditions— Theft or murder or dacoity or counterfeiting coins."

DR. V. K. JOHN :—" Is it parliamentary, Sir, to refer to a member as crocodile."

THE HON. SRI K. MADHAVA MENON :—" Well, Sir, if the cap fits the head of my hon. Friend, let him take it. Dr. John as usual opposed the Bill and perhaps, now that he has become the Leader of the Opposition, he thinks that, as Leader of the Opposition, he must oppose everything for nothing."

22nd April 1948]

DR. V. K. JOHN :—“ That is a remark uncalled for. In fact I supported Mr. Gopala Reddi's Bill.”

THE HON. SRI K. MADHAVA MENON :—“ It is wrong to imagine that a habitual offender can come only from the criminal tribe. Not at all, because there is going to be no longer any more criminal tribes in this Province and you will see that a habitual offender is specifically defined as a man who has been convicted thrice for the offences mentioned in the schedule. It does not refer to criminal tribes, because there is going to be no more criminal tribes hereafter. My hon. Friend thinks that I should have given him figures of habitual offenders. They must come in only hereafter. If he wants figures as to who are habitual offenders who have been convicted a number of times, I must go to all the Collectors' offices and compile figures and I should also go to the Guntur district where there are the Chenchus also. So, it is really impossible to compile the figures from the registers of the various offices since 1924. Yet, I cannot give the figures of habitual offenders because as I said before they are to come in only hereafter under this Act.

“ Another very serious objection of Dr. John was, that relating to section 5. A man notified must intimate to the authority concerned his change of residence or intended change. It is done more to help him than anything else. Supposing a habitual offender resides in a particular place and he has got another house elsewhere and instead of giving the time of change, he may say he intends to go a month hence to his other residence. Could he not do it? He cannot be charged or found fault with, if he intended to change and did not change. He has merely to inform the nearest Police station about it. He may or may not change, but an opportunity is given to him. I do not see any objection in that.

“ Dr. John waxed eloquent about the nervousness of Government about courts. It is really a misrepresentation of facts. If you read section 15 you will see that ‘ no court shall question the validity of any notification (other than one under section 3) or order, issued under this Act.’ The very crux of the whole matter is, a person should be notified as an offender. The most important thing is the notification of an offender and there is section 3 under which he is given an opportunity to question it in a court of law. What are the other notifications? Sections 4 and 6 are the other sections relating to notification. According to section 4, the Government may, by notification, delegate their powers to a District Magistrate. The person concerned should be given an opportunity to file a suit in a court of law against the order of the District Magistrate. If Government delegates the power to a District Magistrate then, they must also give the power to an offender to prefer an appeal against the order of the District Magistrate. Does Dr. John conceive of such a position. Section 6 says ‘ If in the opinion of the Government it is expedient to do so, they

[Sri K. Madhava Menon] [22nd April 1948]

may, by notification, declare that any notified offender shall be restricted in his movements to a specified area.' So, it is only after a declaration the Government may inform a person to reside in such and such a place. These are all administrative actions to be taken after the Act is passed. That a man must reside in a particular place or locality or that he must report to the police, is not an order which can be quashed in a court of law every day. Then the purpose of the Act will not be served. So, Sir, it was certainly misleading on the part of Dr. John to say that we are afraid of courts. The most important thing, here, is the notification of an offender. There we have given him an opportunity to say why he should not be notified, so that it is very wrong on the part of Dr. John to make such a statement. If you read section 7 it says, 'The Government may, by notification, cancel any declaration made under section 6'. Dr. John wants an appeal there also. I cannot understand the confusion he has created. These are the objections of Dr. John.

"Coming to Mr. Ranga Reddi's observations, perhaps he knows something about the criminal tribes in his area and the harshness to which they are put and so he was feeling that something rigorous might possibly be done in future under the Act in respect of these people. It is not correct to say because a man is the son of a father he should be considered as an offender and registered as such. It can only be done under certain conditions. The remark that the definition of habitual offender applies to everybody is not also correct, because 'habitual offender' has been very clearly defined. We have seen to it that the definition makes everything much clearer and that it does not start confusion. As I have already said with reference to section 16, it is not the intention that we want to notify everybody. It is after all an interim provision and rules under this have to be framed and Government in all probability will consider the question of issuing instructions to the authorities, namely, it is only those people who have committed three offences that need be registered. The matter is under consideration. So, Sir, the objections of Mr. Ranga Reddi have no basis in this case."

MR. PRESIDENT :—"The question is—

'that the Bill for imposing certain restrictions on habitual offenders in the Province of Madras, be taken into consideration'."

The motion was put and carried.

4.15 p.m. Clauses 1 to 18, the schedule and the preamble were separately put and carried and formed part of the Bill.

THE HON. SRI K. MADHAVA MENON :—"Mr. President, I move—

'that the Bill be passed into law.'

22nd April 1948] [Sri K. Madhava Menon]

"It is not at all a very pleasant thing to bring such penal measures before the House but times are such that we have to take preventive measures for the safety of the society as a whole."

DR. V. K. JOHN :—"I suggest, Mr. President, that the Government lay before this House information from time to time how many persons are registered as habitual offenders and what active steps the Government are taking from time to time to reform them."

The motion was put and carried and the Bill was passed into law.

V.—GOVERNMENT MOTION.

AMENDMENT TO SCHEDULES III AND IV TO THE MADRAS DISTRICT MUNICIPALITIES ACT, 1920 (MADRAS ACT V OF 1920.)

THE HON. SRI K. CHANDRAMOULI :—"Mr. President, I move—

'that the draft amendments to the Madras District Municipalities Act, 1920 (Madras Act V of 1920) which it is proposed to make in exercise of the powers conferred by section 305-A of the District Municipalities Act, 1920 (Madras Act V of 1920) be approved.'

"These are merely rules to enable Councils and the Government to carry on the administration with efficiency. Schedule III contains rules concerning proceedings of the Council and Schedule IV, taxation and financial rules. The rules have been placed before hon. members and they are self-explanatory and are made for the convenience of administration and I hope hon. Members will approve them."

SRI R. SURYANARAYANA RAO :—"Mr. President, I am not sure Sir, that these rules are so innocuous as the Hon. Minister for local administration just now wishes us to understand. The papers were all sent to us only yesterday and we have had no time to go through them. They deal with very important matters which impose certain burdens on municipal councils. I will only take one instance to show to you that burdens have been imposed. A new sub-clause (o) under sub-rule 1 of rule 43 is inserted which reads: 'payment of such contribution towards the cost of training commissioners of municipalities as may be fixed by the Provincial Government.' Till now evidently municipal councils were not required to pay any contribution towards the training of municipal commissioners. As was pointed out by the Leader of the Opposition, even these schedules will become part of the Act. Though the notice given is an amendment to Schedule III and IV, it is practically an amendment of the Act, because the schedules form part of the Act. If that Act has been under discussion in this House, you would put the schedule also to the vote of the House